

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

19-CR-227-JLS

PETER GERACE, JR.,

Defendant.

**MOTION TO FILE GOVERNMENT'S RESPONSE TO DEFENDANT'S MOTION
FOR RECONSIDERATION OF THE MAGISTRATE'S ORDER OUT OF TIME**

PLEASE TAKE NOTICE that upon the annexed Affidavit of Joseph M. Tripi, Assistant United States Attorney, the undersigned moves this Court for a *nunc pro tunc* extension of time to file the government's response to the defendant's Motion for Reconsideration of the Magistrate Judge's Order, dated June 29, 2021 (see Doc. No. 151).

DATED: Buffalo, New York, July 22, 2021.

JAMES P. KENNEDY, JR.
United States Attorney

BY: s/JOSEPH M. TRIPI
Assistant United States Attorney
United States Attorney's Office
Western District of New York
138 Delaware Avenue
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

19-CR-227-JLS

PETER GERACE, JR.,

Defendant.

AFFIDAVIT

STATE OF NEW YORK)
COUNTY OF ERIE) SS:
CITY OF BUFFALO)

JOSEPH M. TRIPI, being duly sworn, deposes and states:

1. I am an Assistant United States Attorney for the Western District of New York assigned to the prosecution of the instant indictment. As such, I am fully familiar with the facts and circumstances concerning the instant defendants and this investigation.

2. I make this affidavit in support of the government's motion for a *nunc pro tunc* extension of time to file its response to the defendant's Motion for Reconsideration of the Magistrate Judge's Order, dated June 29, 2021 (see Doc. No. 151). On June 29, 2021, the parties appeared before this Court (see Doc. No. 138) regarding the defendant's pretrial motions to unseal search warrant applications (see Doc. No. 113) and co-defendant Joseph Bongiovanni's motion for the same (see Doc. No. 122). At that time, the Court rendered a

decision from the bench denying the defendants' motions. See Doc. No. 138. On July 12, 2021, co-defendant Bongiovanni filed a Motion for Clarification of this Court's decision. See Doc. No. 150. On July 13, 2021, defendant Gerace filed a Motion for Reconsideration of the Magistrate Judge's Order, dated June 29, 2021. See Doc. No. 151. The Court ordered the government to respond to each motion by July 21, 2021. See Text Order, dated 7/14/2021 at 10:47 a.m.

3. On July 21, 2021, the government filed a timely response to co-defendant Bongiovanni's motion. See Doc. No. 163. However, your affiant failed to file a response to defendant Gerace's motion. In part, as a result of additional workload, including supervisory responsibilities, as well as continued investigation and research in this case and others, your affiant did not realize a motion for reconsideration was filed by defendant Gerace after co-defendant Bongiovanni filed his motion for clarification, to which the government timely responded.

4. Earlier today, your affiant communicated with defendant Gerace's attorneys, Joel L. Daniels, Esq., and Joseph M. LaTona, Esq., who both confirmed their lack of objection to the government's motion to file the government's response out of time. The government respectfully requests that the Court schedule the government's response to be filed on July 26, 2021, and the defendant's reply to be filed on July 29, 2021. Mr. Daniels and Mr. LaTona also do not object to the government's proposed schedule for the filing of a response and reply regarding the defendant's motion.

5. For these reasons, and because of the importance of the Court having a full briefing from each party prior to rendering its decision, your affiant believes that good cause exists for the granting of the relief sought by the government.

WHEREFORE, for the reasons stated above, the government respectfully requests this Court find good cause exists for the filing of the government's response to the defendant's Motion for Reconsideration of the Magistrate Judge's Order, dated June 29, 2021, and for the adoption of the dates for a response and reply, as proposed by the government and without objection by the defendant.

JAMES P. KENNEDY, JR.
United States Attorney

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United States Attorney's Office
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Subscribed and sworn to before me

this 22nd day of July, 2021

s/ELIZABETH HARF
Commissioner of Deeds
In and for the City of Buffalo, New York.
My Commission Expires Dec. 31, 2022.